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# Legal Framework of Free-Visa Regime for the “Eastern Partnership” Countries

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**Summary:** The article is devoted to the analyses of legal frameworks of free-visa regime for the “Eastern Partnership” countries. The special attention is paid to the adaptation of six partner countries – Ukraine, Azerbaijan, Belarus, Armenia, Georgia and Moldova to the European Union acquis. The research provides the definition and main features of free visa regime. The research also studies the fulfillment by Moldova, Georgia and Ukraine of the requirements of action plans on visa liberalization. The certain focus also is paid to the policy of the European Union in this area taking into account the peculiarities and intentions of Eastern countries in regard of their European integration.

**Keywords:** free-visa regime, Eastern Partnership, partner country, Association Agreement, rule of law, fundamental principles, sectoral cooperation, third-country nationals.

One of the important goals and purposes of the Eastern Partnership is the increase of cross-border mobility and the liberalization of the visa regime. The Initiative of Eastern Partnership (hereinafter – EP) is aimed to the adaptation of six neighboring countries – Ukraine, Azerbaijan, Belarus, Armenia, Georgia and Moldova to the EU both politically and economically<sup>1</sup>. The liberalization of the visa regime with the European Union is one of the important steps towards this approximation.

The initiative covers both bilateral and multilateral formats of relations between the EU and its partner countries. The bilateral format involves the negotiations between the partner country and the EU on the implementation of tasks in the areas of political association and economic integration with the EU within the framework of the Association Agreement and the establishment of an Free Trade Area (hereinafter – FTA), sectoral cooperation in the areas of energy security,

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<sup>1</sup> Joint declaration of the Prague Eastern Partnership Summit. 7 May 2009, Prague. – [online]. Available at: <[http://ukraine-eu.mfa.gov.ua/mediafiles/files/prague\\_declaration\\_of\\_the\\_eastern\\_partnership\\_summit.pdf](http://ukraine-eu.mfa.gov.ua/mediafiles/files/prague_declaration_of_the_eastern_partnership_summit.pdf)>

agricultural field, social policy, mobility of the population in the context of visa liberalization regime, etc.

The multilateral format is operating as forum for discussion of common interests' issues for the EU institutions, interested EU member states and six EU partner countries.

In particular, on November 24, 2017, the V<sup>th</sup> Eastern Partnership Summit was held in Brussels. According to the results of the Summit, the Joint Declaration of the Eastern Partnership was adopted<sup>2</sup>. Besides the confirmation of the cooperation in different spheres, as well as both parties' commitments to strengthen democracy, rule of law and fundamental values, the participants of the summit also welcomed the full entry into force of the Association Agreements with Georgia, Moldova and Ukraine. Moreover, the introduction of the visa-free regime for Ukraine was also positively highlighted.

Due to the ambiguous understanding of the peculiarities of the visa-free regime by the third-country nationals, we consider to interpret its concept and main features. In particular, the visa-free regime is a legal regime that is granted by the European Union to third countries and provides the free movement of third-country nationals who obtain the biometric passports within the territory of 22 EU Member States and 4 Schengen States – Iceland, Liechtenstein, Norway and Switzerland. The free-visa regime concerns, as a rule, the short-term visits to 90 days within 180 days for the purpose of tourism, business meetings, training visits, cultural events, visits of relatives on the short-term basis (up to 90 days), etc. At the same time, the free-visa regime does not provide the permission for the employment and work in the European Union. In regard of this it is necessary to obtain the permission to work from the host state. Moreover, third-country nationals who would like to be employed in most of the EU countries, still need a national visa, even if they plan to work for no more than three months.

The development of the cooperation between the Eastern Partnership countries with the EU demonstrates that the process of obtaining by a third-country of a free-visa regime with the European Union is long and systematic. In particular, before the adoption by the EU of the final decision on granting of visa-free travel to the countries is preceded by the procedure for the parties to adopt special documents – action plans for visa liberalization. Such documents cover almost 40 systemic reforms that should be implemented by third countries that are interested in obtaining a free-visa regime. In accordance with the action plans for visa liberalization the joint committees of the EU Commission and the

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<sup>2</sup> Joint Declaration of the Eastern Partnership on November 24, 2017. [online]. Available at: <[https://eeas.europa.eu/headquarters/headquarters-homepage/36220/%D1%81%D0%BF%D1%96%D0%BB%D1%8C%D0%BD%D0%B0\\_uk](https://eeas.europa.eu/headquarters/headquarters-homepage/36220/%D1%81%D0%BF%D1%96%D0%BB%D1%8C%D0%BD%D0%B0_uk)>

administrative authorities of the relevant third country should regularly evaluate the progress in the implementation of the proper legislation.

Moldova was one of the first countries of the Eastern Partnership that received free visa regime with the EU on April 28, 2014. It should be noted that the visa dialogue between the parties was initiated in June 15, 2010. In January 2011, the Action Plan for Visa Liberalization was adopted. Based on the results of five reports on progress in the implementation of the Plan (September 2011, February 2012, June 2012, June 2013 and November 2013), on November 27, 2013, the EU Commission issued recommendations to Moldova on the introduction of a free visa travel regime for Moldovan citizens with biometric passports. Accordingly, since April 28, 2014, the citizens of Moldova, in comparison with citizens of other five Eastern Partnership countries, were able to enjoy free visa travel with the EU. It should be noted that for this purpose about 35 system reforms have been carried out in Moldova in order to ensure the proper control of migration and borders. Among such reforms was the introduction of the biometric passports, the strengthening of the fight against corruption, money laundering, etc.

During the first year after liberalization of the visa regime more than 460000 Moldovans were able to visit the EU without a visa<sup>3</sup>.

Taking into consideration the practice of free visa regime for Moldova, in the end of 2016, only 0.5% of cases of Moldovan citizens returned to their homeland or refused to enter the territory of the European Union because of violation of their rules of stay. Such cases of violations of the visa regime by the Moldovan citizens are not so popular. In whole, the citizens of Moldova within 4 years from the date of receiving of a free-visa regime have shown themselves to be law-abiding citizens without violation of the EU's residence regime and adhering to all visa requirements and procedures established by the European Union.

In our opinion, such low rates of violations were the result of a high-quality informational and, at the same time, communicative campaign conducted by the government of the state, which was mainly implemented by the media and, to a certain extent, by civil society. This campaign was launched in early 2014. According to the campaign the citizens of Moldova were informed of the minimum list of documents that should be available for the smooth crossing of the border with the European Union. The minimum package of documents covers the medical insurance, confirmation of accommodation, availability of a return ticket etc.

Moldova, in comparison with other Eastern Partnership countries, has its own peculiarities. In particular, there are two categories of citizens of Moldova – with

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<sup>3</sup> BENEDYCHAK, Yakub, LITRA, Leonid, MAZZEK, Krzysztof. Moldova: a year without a visa. Positive experience for Ukraine, May 27, 2015. [online]. Available at: < <https://glavcom.ua/publications/129834-moldova-rik-bez-viz.-pozitivnij-dosvid-dlja-ukrajini.html> >

national citizenship and dual citizenship. In other words, even before the country received a free-visa regime, the overwhelming majority of Moldovan citizens had the opportunity to exercise their right to freedom of movement through the territory of the EU without difficulties. This is primarily those Moldovan citizens who hold the Romanian passports. Their share is about 330 000, which makes up about one-third of the population of the country.

Another feature of Moldova's free visa regime is its application by those citizens who live in Transnistria. It is important to note that action plans for visa liberalization concluded by the European Union with third countries do not contain references to frozen conflicts. This issue is regulated exclusively at the state level. Taking into account that Moldova considers the occupied territory of Transnistria as part of its territory and its inhabitants as the Moldovan citizens, such persons were able to receive the Moldovan documents and passports, providing to state authorities certificates to be issued in Transnistria.

In order to make it impossible to obtain a Moldovan passport on the basis of false documents, the Moldovan parliament adopted the law that provides the special identification procedure. The obtained information is checked with the data of the constitutional bodies – the data register owned by Moldova. Such register covers the data of the Transnistrian region to 1994. Taking into consideration the total number of available Moldovan biometric passports – 1169017 – about 77,000 belongs to citizens who are living in Transnistria. Almost about 28,000 of these documents were received during 2016.

Also, among the positive but indirect consequences of the introduction of a free visa regime in Moldova, is the access of low-flying air carriers in the country – Wizz Air and Volotea. They, in its turn, provide the opportunities for citizens of Moldova for the appropriate price of tickets to take advantages of low-cost air carriers to the European countries.

In respect of Georgia, on February 27, 2017, the EU Council finally approved the free visa regime for the citizens of Georgia. On March 1, 2017, in Brussels, the decision was signed on the abolition of visas by the European Union for citizens of Georgia. On March 08, 2017 the Regulation (EC) 2017/372 of the European Parliament and of the Council of the EU of March 1, 2017 amending Regulation (EC) No. 539/2001, which lists third countries, whose citizens should be in possession of visas when crossing the EU's external borders, and those countries whose citizens are exempted from this requirement was published in the EU Official Journal<sup>4</sup>. In accordance with Article 1 of the Regulation, Georgia

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<sup>4</sup> Regulation (EU) 2017/372 of the European Parliament and of the Council of 1 March 2017 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Georgia) 8.3.2017 L 61/7. [online]. Available at: <<http://eur-lex>.

is referred to the list of third countries whose citizens are exempted from the requirement to have a visa when crossing the EU's external borders. According to the procedure, the document came into force in 20 days. Therefore, in practice the free visa regime for the citizens of Georgia was applied on March 28, 2017.

As well as in Moldova, the practice of communicative campaign carried out by the government of the state was widespread in Georgia too. In particular, the Ministry of Internal Affairs of Georgia issued a decree according to which the officials of all border checkpoints had to conduct the detailed interviews with Georgian citizens traveling to the EU. Thus, the main functions of consulting of citizens and checking their documents for compliance with visa rules and procedures were carried out precisely by border guards.

The free visa regime granted to Georgia by the EU does not differ from the mentioned free visa regime with Moldova. In particular, this is the right of Georgian citizens with biometric passports to enter the EU territory up to 90 days within 180 days. In the case when this rule is violated, such persons may be transferred to the Schengen Information System (SIS). Also they are prohibited to enter the territory of the European Union for the next 5 years. In addition, the violators of the free visa regime will have to pay a fine of 3 thousand euros.

Crossing the borders of the Schengen States, it is desirable for the citizens of Georgia to take with them virtually all the documents that are usually submitted for a visa. Usually, it is enough to have only one biometric passport. However, the migrant workers, in accordance with the provisions of the Schengen Border Code, reserve the right to confirm the purpose and conditions of travel, to prove the availability of sufficient funds for staying in the territory of the EU and the subsequent return.

Thus, in order to prove the solvency, the person shall provide, in particular, the traveler's checks, reservation of accommodation, cash currency and even a credit card to check the limit. The required amount directly depends on the duration of the trip and the country of destination. The necessary limits of the state, as a rule, indicate in their own requirements for the travelers.

In accordance with the renewed EU Commission's Annex XVIII to the EU Visa Code, Latvia requires only 14 euro per day per person, Estonia – 86 euros, Germany – 45 euros, Spain – 66.5 euros, and the Czech Republic – 41 euros<sup>5</sup>.

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[europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.061.01.0007.01.ENG&toc=OJ:L:2017:061:TOC](http://europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.061.01.0007.01.ENG&toc=OJ:L:2017:061:TOC)

<sup>5</sup> Reference amounts required for the crossing of the external border fixed by national authorities 24/04/2017, Annex 18 of the Visa Code Handbook. [online]. Available at: <[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/borders-and-visas/schengen/docs/handbook-annex\\_25\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/borders-and-visas/schengen/docs/handbook-annex_25_en.pdf)>

In case of visits of relatives or acquaintances, it is necessary to have the invitation and information about the party that is inviting, including the address and the phone. Accordingly, if the purpose is to participate in a business or scientific conference, it is desirable to have an invitation to it. And if the purpose of the trip is the training, then the confirmation of enrollment for the courses may be required.

The health insurance is not required, but the European Service of External Relations recommends it to be formed. The similar recommendations are applied to the return ticket as well.

In particular, during the first month since the introduction of a free visa regime, about 11,700 of Georgian citizens have benefited from a free visa regime. Only 26 people were denied to entry due to the objective circumstances, in particular, the absence of a biometric passport and the inability to justify the purpose of their visit to the EU Member States.

The important feature of obtaining of a free visa regime by Georgia is the extension of free visa regime not only to those citizens of Georgia who live under the controlled part of the country, but also to those citizens who are living within the territories of the Southern Ossetia and Abkhazia and who have the Georgian passports. However, there are not so many people. These issues, as well in the case of Moldova, are regulated at the national level.

Ukraine is one of the countries that recently, on June 11, 2017, obtained the free visa regime with the EU. The dialogue on visa liberalization between the parties was launched on November 22, 2010 at the EU-Ukraine summit in Brussels. In the result of the summit the Action Plan for Visa Liberalization 2010 (hereinafter – APVL) was adopted<sup>6</sup>. The APVL contained four main blocks of tasks that Ukraine had to perform in order to join the states whose citizens did not need visas for entry into the territory of the European Union Member States. The first block covered the security of documents, including the introduction of biometric data; the second concerned the migration management, in particular, measures of illegal migration and readmission; the third involved the public order and security, and the fourth covered the provisions of fundamental human rights and freedoms.

The final decision on Ukraine's compliance with all the criteria of the Action Plan for Visa Liberalization was adopted by the EU Commission on December 18, 2015. The document stated that Ukraine fulfilled all the criteria set out in the four blocks of the APVL. On November 17, 2016, the Committee of Permanent

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<sup>6</sup> Action Plan on EU Visa Liberalization for Ukraine of November 22, 2010. [online]. Available at: <[http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art\\_id=244813273&-cat\\_id=223280190&ctime=1324569897648](http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art_id=244813273&-cat_id=223280190&ctime=1324569897648)>

Representatives of the EU Member States (COREPER), on behalf of the Council of the European Union, delivered the decision to grant Ukraine a free visa regime. The decision refers to free visa entry for the Ukrainian citizens during their travel to the territory of the EU Member States for a term up to 90 days during 180 days. The Committee also noted that Ukraine fulfilled fully all the criteria foreseen by the APVL. Finally, on June 11, 2017, the decision of the EU Council on the introduction of a free visa regime for Ukraine came into force.

In other words, since June 11, 2017, the citizens of Ukraine with the biometric passports were able to move through the territory of the European Union without visas. It means that Ukrainians have the right to enter the territory of any of the Schengen area Member States, except the Great Britain and Northern Ireland.

It should be noted that the free visa regime does not provide for Ukrainians the right to permanent employment. In order to get this opportunity the person should get a special permission for work. In addition, for employment in most European countries, citizens of Ukraine still need a visa, even if they will work for no more than three months.

At the same time, it is possible to distinguish the main advantages of Ukraine's free visa regime. Firstly, the citizens of Ukraine, in addition to the EU Member States, also got access to a set of other countries. Due to the liberalization of the visa regime with the EU, Ukraine is referred to the "white list" of the third countries of the Schengen area, and Ukrainians have been able to travel without visas to other countries identified by the European Union in the abovementioned list. For example, the citizens of Ukraine got the right to enter the territory of such countries as South Korea, Mexico, Uruguay, UAE and others without a visa.

In addition, the abolition of short-term visas will also help create the new economic opportunities, taking into consideration that the process of application of the trade chapter of the Association Agreement has already begun.

At the same time, despite the number of advantages for the granting by the EU of a free visa regime for Ukraine, at the European Union level, it is emphasized the importance of establishing in the future of a monitoring mechanism for the observing of the criteria foreseen by the APVL. In particular, the report of the European Parliament on the expediency of canceling visas for Ukraine, published on the website of the European Parliament on July 20, 2016, stipulates that all the criteria, achieved in the framework of visa liberalization, should remain the subject of monitoring mechanism by the European Union<sup>7</sup>.

Such monitoring will take place within the existing bilateral bodies established under the Association Agreement. In our opinion, the introduction of such

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<sup>7</sup> European Parliament proposes visa-free travel for citizens of Ukraine, Brussels, 20 July 2016. [online]. Available at: <[http://europa.eu/rapid/press-release\\_IP-16-1490\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1490_en.htm)>

monitoring mechanism will be effective as it ensures that the EU has levers to monitor the continuity of the implementation of anti-corruption legislation, respect for the rule of law, human rights and fundamental freedoms, and will further promote the process of reform in Ukraine.

Besides the Action Plan on Visa Liberalization, the significant and, at the same time, effective legal instrument for the introduction of a free visa regime for the Ukrainian citizens has become the Association Agreement between Ukraine, on the one hand, and the European Union and its member states, on the other hand (hereinafter – AA)<sup>8</sup>, signed on June 27, 2014 in Brussels.

The preamble of the AA recognizes Ukraine as the European country with a common history and common values with the European Union Member States. This provision is important because it opens the door for Ukraine to join the European Union in the future, as any European country that respects values (such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, etc.), specified in Art.2 of TEU, and committed to embody all of them. Accordingly, the principle of respect for human rights and fundamental freedoms, along with the rule of law, is embodied in the preamble and Article 14 of AA under Chapter III “Justice, Freedom and Security”<sup>9</sup>. Within the limits of the mentioned chapter, it means, first of all, the legal regulation of the freedom of movement of citizens of Ukraine through the territory of the EU Member States, cooperation in the field of migration, asylum, border management; protection of personal data; mobility of workers; treatment of employees, etc.

In conformity with Article 19 of the document, the movement of persons between the EU and Ukraine is regulated by the current readmission agreement of 2007, the simplification of issuance of visas in 2007 and 2012.

Chapter III also includes the provisions on the status of Ukrainian citizens-workers in the EU (Article 17). Thus, it is emphasized that workers from Ukraine do not fully apply the freedom of movement of persons within the EU. Ukraine should regulate access to work for its citizens in the EU market on the basis of bilateral treaties with each member state of the Union (Article 18). At the same time, the AA assumes that the attitude towards Ukrainian citizens who legally work in the territory of the Union should exclude discrimination on the basis of nationality in relation to working conditions, wages or dismissals

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<sup>8</sup> Association Agreement between the European Union and its Member States, of the one Part, and Ukraine, of the other Part. [online]. Available at: <[http://glavcom.ua/pub/2012\\_11\\_19\\_EU\\_Ukraine\\_Association\\_Agreement\\_English.pdf](http://glavcom.ua/pub/2012_11_19_EU_Ukraine_Association_Agreement_English.pdf)>

<sup>9</sup> Association Agreement between the European Union and its Member States, of the one Part, and Ukraine, of the other Part. [online]. Available at: <[http://glavcom.ua/pub/2012\\_11\\_19\\_EU\\_Ukraine\\_Association\\_Agreement\\_English.pdf](http://glavcom.ua/pub/2012_11_19_EU_Ukraine_Association_Agreement_English.pdf)>



compared to the EU citizens. In its own turn, Ukraine should provide the same status to the citizens of the Union.

In regard of Armenia, only in March 2017 in Yerevan the new Agreement on Comprehensive and Deep Partnership with the European Union was initiated. According to the document, Armenia plans to intensify the dialogue with the European Union on visa liberalization.

Therefore, the initiative “Eastern Partnership” involves the approximation of Eastern European partner countries of the European Union, to share common values and principles with the EU, that demonstrate steady and effective progress in implementing reforms. In addition, the Eastern Partnership is a common tool for the EU and six partner countries to implement the Association Agreements.

The first documents that predicted the free visa regime were the action plans on visa liberalization concluded by the EU with the EU partner countries. Only three of the six Eastern Partnership participants – Moldova, Georgia and Ukraine – became the first countries that successfully fulfilled the requirements of the action plans. For other countries – Belarus, Armenia and Azerbaijan – free visa regime is not foreseen in the coming days. The policy of the European Union in this area takes into account the peculiarities and intentions of these countries in regard of their European integration.